

# Supreme Court of Kentucky

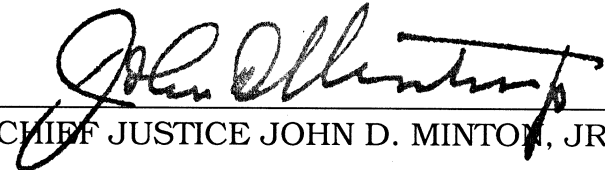
## ORDER

**IN RE: ORDER APPROVING THE RULES OF COURT PRACTICE AND  
PROCEDURE FOR THE 42ND JUDICIAL CIRCUIT, FAMILY  
COURT DIVISION, CALLOWAY AND MARSHALL COUNTIES**

Upon recommendation of the Judges of the 42nd Judicial Circuit, and  
being otherwise sufficiently advised,

The Rules of Court Practice and Procedure for the 42nd Judicial Circuit,  
Family Court Division, Calloway and Marshall counties, are hereby approved.  
This order shall be effective as of the date of this Order, and shall remain in  
effect until further orders of this court.

Entered this the 13<sup>th</sup> day of April 2012.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

**RULES OF COURT  
PRACTICE AND PROCEDURE  
COMMONWEALTH OF KENTUCKY**

**42<sup>ND</sup> JUDICIAL CIRCUIT COURT  
CALLOWAY & MARSHALL COUNTIES  
FAMILY COURT DIVISION**

**WEBSITE**

**<http://courts.ky.gov/circuitcourt/familycourt/sites/callowaymarshall.htm>**

**REVISED 6/2011**

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**FAMILY COURT RULES  
OF THE 42<sup>ND</sup> JUDICIAL CIRCUIT  
(FCRP42)**

**Rule 1        Introduction**

**101    Introduction**

These are the Rules of Practice of the Forty-Second Circuit (Calloway and Marshall Counties) Family Court (hereinafter referred to as "Family Court"). These Rules supplement the Kentucky Rules of Civil Procedure, the Kentucky Rules of Criminal Procedure and the Family Court Rules of Procedure and Practice (FCRPP). All previous rules adopted by the Calloway/Marshall Family Court are hereby rescinded.

**102    Effective Date**

The effective date of these Rules shall be thirty (30) days after Kentucky Supreme Court Approval.

**103    Citation**

These Rules shall be cited as FCRP42 (Family Court Rules of Procedure).

**104    Holidays**

Family Court shall adhere to the list of Court Holidays as set out by the Administrative Office of the Courts which will be published annually in the Kentucky Bar Association newsletter.

**Rule 2        Court Scheduling/Motion Hour/ Procedures for Filing/Additional Fees**

**201    Schedule**

The following is the hearing schedule for cases before the Family Court.

CALLOWAY		
Monday	8:30 a.m.	Dependency, Neglect and Abuse
	1:00 p.m.	Child Support and Paternity (2nd & 4th Mondays)
	1:00 p.m.	Juvenile Status Offenses (1st & 3rd Mondays)
	2:30 p.m.	Civil Contempt (2nd & 4th Mondays)
Wednesday	8:30 a.m.	Motion Hour (2nd & 4th Wednesdays)
	9:30 a.m.	Scheduled hearings

	8:30 a.m.	Domestic Violence
	10:30 a.m.	Scheduled Hearings
<b>MARSHALL</b>		
Tuesday	8:30 a.m.	Domestic Violence
	10:30 a.m.	Scheduled Hearings
Wednesday	8:30 a.m.	Motion Hour (1st & 3rd Wednesdays)
	9:30 a.m.	Scheduled Hearings
Friday	8:30 a.m.	Dependency, Neglect and Abuse
	1:00 p.m.	Child Support and Paternity (2nd & Fourth Fridays)
	1:00 p.m.	Juvenile Status Offenses (1st and 3rd Fridays)
	2:30 p.m.	Civil Contempt (2nd & 4th Fridays)

## **202 Motion Hour**

All motions to be heard on the Wednesday motion docket shall be filed at least five (5) working days prior to the Wednesday motion docket, unless otherwise allowed by the Family Court Judge. Motion hour shall be limited to uncontested motions, motions to schedule hearings and motions which can be limited to legal arguments only.

## **203 Family Court Case Data Information Sheet**

All cases filed or reopened in the Family Court division of the Circuit Court shall, with the filing of any petition or motion (in the case of a reopening), complete an AOC-FC-3 Family Court Case Data Information Sheet, which may be obtained in the Circuit Court Clerk's Office.

## **204 Reopening Cases**

**204.1** With regard to FCRPP 3(6) the “\$50 reopen after six months fee” does not apply to Motions for Contempt/Motions for Rule.

**204.2** Personal service shall be made pursuant to the Kentucky Rules of Civil Procedure in domestic relations cases reopened after six (6) months from the entry of the final decree for the purpose of modifying a decree. On such cases, service on any prior attorney of record does not constitute service under the Kentucky Rules of Civil Procedure.

## **205 Copy Expenses**

All litigants are responsible for bringing sufficient copies of all exhibits intended to be entered into evidence. Failure to comply with this requirement may subject the non-complying litigant to assessment of additional court costs for copy charges.

## **Rule 3 Adoptions/Termination of Parental Rights**

### **301 Adoption Records**

Except as otherwise provided, upon entry of the final order in an adoption case, the Clerk shall place all papers and records in a suitable envelope which shall be sealed and shall not be opened for inspection by any person except on written order of the court or as otherwise permitted under this rule. The Clerk or Deputy Clerks are permitted to unseal and open an adoption file only for such reasons as are necessary in the performance of their duties as custodians of the records and may furnish certified copies of the Order of Adoption to the adoptive parents.

## **Rule 4 Domestic Violence Protocol and 24 Hour Access Policy**

The Twenty-Four Hour Accessibility to Emergency Protective Orders and Local Joint Jurisdiction Domestic Violence Protocol for the 42<sup>nd</sup> Judicial Circuit and District is attached as Appendix A and incorporated herein by reference as if copied and set out at length herein as is set forth verbatim.

## **Rule 5 Paternity**

### **501 Petitions**

All petitions for paternity must include one of the following:

- a. The mother's husband as a party to the action if the child was born during lawful wedlock or within ten (10) months thereafter; or
- b. The affidavit of the Petitioner addressing the issue as to the mother's marital status when the child was born and within ten (10) months prior to the birth of the child.

## **Rule 6 Dependency Neglect and Abuse**

### **601 Notice of Hearing**

In order to comply with Adoption and Safe Families Act (ASFA) of 1997, the Guardian Ad Litem in all dependency, neglect and abuse cases shall notify the juvenile's current foster family or custodian if other than the Cabinet for Families and Children, of all hearings coming before Family Court.

### **602 Release of Confidential Records**

The Clerk of the court is authorized to release confidential juvenile records of Dependency, Neglect or Abuse proceedings to the attorney (whether it be an appointed

public defender, private attorney, or court-appointed attorney) for the juvenile or the juvenile's parent in a corresponding criminal or civil legal action. "Corresponding legal action" shall include but is not limited to: divorce actions, termination of parental rights actions, juvenile status offense actions, or criminal actions involving the same or similar transactions and occurrence alleged in the dependency, neglect or abuse action.

### **603 Protocol for Filing Dependency, Neglect and Abuse Petitions**

During normal working hours (8:00 a.m. - 4:30 p.m.), Monday through Friday, excluding holidays, persons filing a Petition for Dependency, Neglect and Abuse shall file said Petition with the Clerk of the Court no later than thirty minutes prior to the closing hours. At all other times, persons who wish to file a Petition for Dependency, Neglect and Abuse shall contact local law enforcement or the Cabinet for Health and Family Services. If the circumstances warrant, local law enforcement or the Cabinet for Health and Family Services shall contact the Family Court Judge or, if unavailable, the District Judge in accordance with FCRPP 19 to determine whether an emergency custody order should be entered. All Petitions for Dependency, Neglect and Abuse received after normal business hours shall be filed with the Clerk of the court by noon on the next business day in compliance with FCRPP 20.

## **Rule 7 Domestic Relations Practice**

### **701 Appearances, Waivers and Agreements**

Any unrepresented party who signs and acknowledges an appearance and waiver or agreement shall do so before a notary or deputy clerk. All agreements and agreed orders shall contain the correct mailing addresses for the attorneys or parties if not represented by counsel unless the party has an active Emergency Protective Order or Domestic Violence Order against the opposing party.

### **702 Mediation**

a. Pursuant to FCRPP 2(6), the Family Court Judge may, by appropriate order, refer the case to mediation with or without the consent of the parties. Cases shall be referred to a Court-approved mediator or the parties may select a mediator with equivalent experience who is not on the Court-approved list.

b. Except as otherwise provided by this rule or ordered by the Court for good cause shown, all mediation documents and mediation communications are confidential and shall not be disclosed. Mediation documents and communications are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding. An exception to this rule is that the mediator shall be responsible for reporting abuse according to KRS 209.030 and KRS 620.030.

c. If a case is settled prior to or during mediation, an attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in any other case. If some, but not all, of the issues in the case are settled during mediation or

if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within ten (10) days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket and in accordance with FCRPP 2(6)(b), (c), (d), (e) and (f).

## **Rule 8            Status Offenses**

There are no local rules pertaining to Status Offense Cases. See FCRPP 37 – 44.

## **Rule 9            Miscellaneous**

### **901      Identification of Counsel or Party Required**

Every pleading, motion and any other paper filed in the record by counsel or party shall contain the case number, typed or printed name, address, telephone number, fax number and e-mail address of the attorney or party signing the paper. A rubber stamp shall not be deemed a signature either under this rule or CR 11.

### **902      Video Copies of In-Chamber Interviews with Children**

Pursuant to FCRPP 17, the Circuit Court Clerk's Office shall not release any Family Court video in-chamber interviews with children without a specific written order of the Family Court Judge. An individual requesting a judicial order must provide the Family Court Judge a written explanation for the request which specifically indicates the portion of the video record being requested is an in-chamber interview with a child and specific purpose of the request.

### **903      Requests for Confidential Video Records**

The Circuit Court Clerk's office shall not release any copies of Family Court confidential video records without a specific written order from the Family Court Judge. An individual requesting a judicial order must file a written motion, with notice to all parties, including the child's Guardian Ad Litem, if any, and set forth the purpose for the request.

Except that, pursuant to KRS 610.340 (2), this shall not apply to public officers or employees engaged in the investigation and prosecution of cases under KRS Chapters 600 through 645 or other prosecutions authorized by Kentucky Revised Statutes, as certified by that public officer or employee. Said public officer or employee shall use and distribute this information only for investigation or prosecution of offenses under the Kentucky Revised Statutes.

### **904      Personal Identifiers**

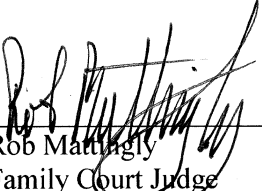
A. The Family Court Case Data Sheet must be fully completed in all cases. In addition, all pleadings must comply with the requirements of KRS Chapters 205, 403, 405, 406 and 407 by providing the personal identifying information required in those chapters.




However, except as set forth in paragraph B below, where personal identifiers are required by statute or contained in other documents or exhibits filed with the court pursuant to the above-stated chapters, parties shall comply with CR 7.03(1)(b) by filing one copy from which any personal data has been redacted and filing an unredacted copy in a marked and sealed envelope. The clerk of the court shall allow the unredacted sealed copy of the pleading, document, or exhibit containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific orders of the court. As used in this section, "personal identifier" means a Social Security number or tax-payer identification number, date of birth, or financial account number.

- B. Pleadings, documents, or exhibits filed in actions deemed confidential by statute need not be redacted, and any access to those files shall be governed by KRS 199.570, KRS 610.340, KRS 625.045 and KRS 625.108.
- C. Upon a dissolution of marriage case being closed, the Clerk of the Circuit Court is hereby authorized to unseal the envelope and remove the VS-300 for mailing to Kentucky's Office of Vital Statistics; otherwise the sealed envelope may only be unsealed upon direction of the presiding judge or the Circuit Court Clerk and is to be re-sealed. The clerk shall keep a record in the form of a log as to when the envelope was unsealed, by whom and for what purpose the envelope was unsealed.

APPROVED this the 9<sup>th</sup> day of April, 2012.

  
Rob Mattingly  
Family Court Judge  
42<sup>nd</sup> Judicial Circuit, Division II

  
Dennis R. Foust  
Circuit Court Judge  
42<sup>nd</sup> Judicial Circuit, Division I

## **APPENDIX A**

### **TWENTY-FOUR (24) HOUR ACCESSIBILITY TO EMERGENCY PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION DOMESTIC VIOLENCE PROTOCOL**

#### **42<sup>ND</sup> JUDICIAL CIRCUIT AND 42<sup>ND</sup> AND 58<sup>TH</sup> JUDICIAL DISTRICTS CALLOWAY AND MARSHALL COUNTIES**

Pursuant to KRS 403.735, and in compliance with Family Court Rules of Procedure and Practice (FCRPP) Rule 4, this local domestic violence protocol is established to ensure twenty-four (24) hour accessibility to emergency protective orders and to establish written procedures for domestic violence matters in which there may be joint jurisdiction between the circuit/family and district courts.

#### **I. Uniform Protocol for Handling Cases**

A. All domestic violence cases must be processed consistent with the rules and procedures set forth in the Kentucky Circuit Court Clerk's Manual.

B. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.

C. No county shall adopt a blanket "no-drop" policy. Domestic violence cases are civil matters within the purview of CR 41.01.

D. Domestic violence cases may be reassigned or transferred to another circuit when there exists a pending dissolution or custody matter in another circuit court in Kentucky. In the event a domestic violence case is transferred to another circuit prior to a domestic violence protective order being entered, the emergency protective order shall continue and the summons shall be reissued by the initiating court, pursuant to KRS 403.740 (4), for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

#### **II. Twenty-four Hour Accessibility**

A. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **during** regular business hours:

1. The Circuit Court Clerks of Calloway and Marshall Counties and any of their sworn deputy clerks; and
2. The County Attorneys of Calloway and Marshall Counties and any Assistant County Attorneys.

B. The following agencies and officers are authorized to take domestic violence petitions and administer oaths to petitioner **after** regular business hours of the Circuit Court Clerk in the county where the petition is being filed:

1. The Circuit Clerks of Calloway and Marshall Counties, and all of their sworn deputies;
2. The Sheriffs of Calloway and Marshall Counties and all other sworn deputies and dispatchers;
3. The Jailers of Calloway and Marshall Counties and all of their sworn deputies;
4. The County Attorneys of Calloway and Marshall Counties and any Assistant County Attorney;
5. The Chiefs of Police for the cities of Murray, Benton, Calvert City and any other incorporated city in Calloway and Marshall Counties and all sworn officers and dispatchers within their departments;
6. Murray State University Campus Police Officers; and
7. Any Kentucky State Police Officer found in Calloway or Marshall Counties.

C. The individual taking the petition should review it for completeness prior to swearing the petition.

D. Upon receipt of a petition **during** regular business hours of the Circuit Court Clerk in the county where the petition is being filed, the authorized agency/officer shall present the petition to the Family Court Judge, if the judge is in the county and available. In the event the Family Court Judge is not in the county or is unavailable, the petition shall be first presented to the District Judge for the county and then to the Circuit Judge of general jurisdiction for the 42<sup>nd</sup> Judicial Circuit if the District Judge cannot be found.

E. Upon receipt of a petitioner **after** regular business hours, the authorized agency/officer shall present the petition to the District Court Judge for the county where the petition is to be filed and, if not available, the Family Court Judge, and if not available, the Circuit Judge of general jurisdiction.

F. Petitions will be reviewed within an hour of presentation to a judge unless it is impossible due to the unavailability of a judge.

G. The schedule for domestic violence hearings is as follows:

1. In Calloway County, the hearings are conducted each Thursday at 8:30 a.m.
2. In Marshall County, the hearings are conducted each Tuesday at 8:30 a.m.

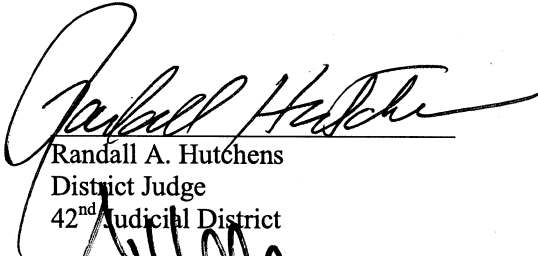
### III. Contempt Proceedings

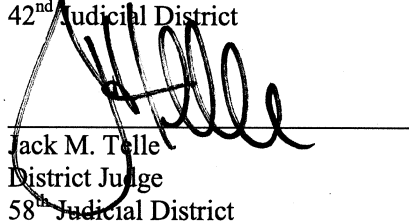
A. Pursuant to KRS 403.760, civil and criminal proceedings for violation of a protective order shall be mutually exclusive.

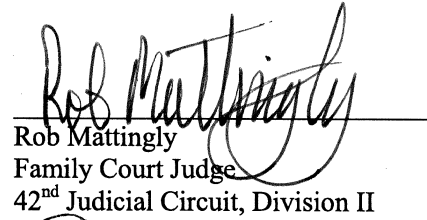
B. Petitioners seeking to initiate contempt proceedings should contact the Circuit Court Clerk's Office or the County Attorney's office in the county where the Emergency Protective Order or Domestic Violence Order was issued.

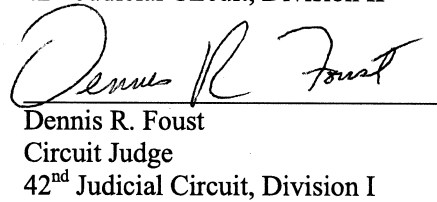
C. No petitioner may be held in contempt for failing to appear at a domestic violence hearing.

The above protocol is adopted by all judges in the circuit/district this the 28 day of March, 2012.

  
Randall A. Hutchens  
District Judge  
42<sup>nd</sup> Judicial District

  
Jack M. Telle  
District Judge  
58<sup>th</sup> Judicial District

  
Rob Mattingly  
Family Court Judge  
42<sup>nd</sup> Judicial Circuit, Division II

  
Dennis R. Foust  
Circuit Judge  
42<sup>nd</sup> Judicial Circuit, Division I